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No. 88-604

In The

Supreme Court of the United States

October Term, 1988

VICKI FROST,

Petitioner,

v.

HAWKINS COUNTY BOARD OF EDUCATION, JEAN PRICE, JOE ASHBROOK, BILL B. SNODGRASS, CITY OF CHURCH HILL, TENNESSEE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT BILL SNODGRASS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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16 pp

QUESTIONS PRESENTED

1. May a public school refuse to exempt a student who, along with parents, raises sincere religious objections to certain required books in a reading class?

2. May a public school have a nondisruptive mother arrested on school property and jailed for peacefully stating to school officials her sincere religious objection to certain required books in a reading class and for petitioning for exemption of her daughter from those books?

3. May public schools expel children from all aspects of the public school curriculum, and thereby deny a public benefit, if they and their parents object on sincere religious grounds to one portion of the school curriculum?

4. Do public schools have a constitutional duty to provide reasonable education alternatives to accommodate the sincere religious objections of a few students and parents to specific curricular materials?

The respondent insists that the issues formulated by the petitioner were not presented for review in the courts below and are not supported in the record.

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STATEMENT OF THE CASE

Petitioner has mischaracterized the factual record developed during the trial of this simple civil rights case in an attempt to persuade the Court to review a false arrest action which was dismissed by the jury as to defendant Superintendent Bill Snodgrass and other individual defendants, and which was subsequently dismissed in its entirety by the Sixth Circuit Court of Appeals in *Frost v. Hawkins County Board of Education, et al.*, 851 F.2d 822 (1988).

Petitioner Vicki Frost, a resident of Hawkins County, Tennessee, and mother of four (4) school age children developed personal objections to certain stories contained in the Holt, Rinehart & Winston reading textbook used by her second grade daughter, Sarah. [Frost, Tr. A – 5][1] Reading textbooks published by Holt, Rinehart & Winston had been adopted by the Hawkins County School Board for use throughout the school system for the 1983 school year. Defendant Bill Snodgrass was the elected Superintendent of the school system.

Petitioner agitated both the School Board, the Church Hill Elementary School, and the Church Hill Middle School in an effort to have the reading series banned for allegedly teaching witchcraft, humanism, and feminism. When her vigorous public relations campaign failed, the petitioner called the police, interfered with the routine of the Church Hill Elementary School, and provoked her

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[1] "Tr." references are to the pages of the trial transcript. The witness' name precedes the transcript designation. "R." designates the docket entry numbers in the District Court Record.

own arrest. After the December dismissal of the misdemeanor charges, she continued to publicize her objections to the Hawkins County School curricula and reading texts. Petitioner went so far as to publicly accuse the school system of sanctioning various explicit sexual misconduct in the hallways of a County high school. [Frost, Tr. B – 86, 87; Mozert, Tr. E – 63, 64, 72]. This case presents an extremely interesting factual situation but does not involve any First Amendment constitutional issues.

The Pretrial Order of July 12, 1985 supplanted the pleadings and set the parameters for developing the record during the trial of the case. [R. 24, ¶ 2(a)]. The delineation of the plaintiff's claims in the pretrial order do not contain any reference to plaintiff's "sincere" religious convictions, deprivations of religious freedom, or any other claims which indicated that the parties were involved in a "First Amendment" civil rights case. The pretrial order and the trial record deal with events leading up to the plaintiff's arrest at the Church Hill Elementary School in November, 1983, and with the damages she allegedly sustained because of all of the publicity surrounding her activities, interviews, and press releases from August, 1983 through December, 1983.

The petitioner has previously framed this case's constitutional issues in her Brief of Appellant, U.S. Ct. App., 6th Cir., No. 86-5690/5706 thusly:

ISSUE TWO

> Did the district court err by refusing to charge the jury as requested on certain civil rights proven to have been violated? [Brief of Appellant, p. 24]

. . .

1. Appellees violated Mrs. Frost's constitutional right to remain in the parking lot of the Church Hill Elementary School with her child where seated in her automobile in a non-restrictive parking lot, peaceable, in broad daylight, not obstructing any traffic and not violating any law. [*Id.* at 25]

. . .

2. Appellees violated Mrs Frost's constitutional right to be free from interference by any human authority with her, or her child's rights of conscience and moral sense or [sic] right and wrong. [*Id.* at 27]

. . .

3. Appellees violated plaintiff's right not to be retaliated against by Appellees under color of state authority for exercising other federally protected rights. [*Id.* at 29]

The omission in the Appellant's Brief of any reference to alleged deprivations of "religious" liberties is certainly understandable in light of the petitioner's testimony during the trial of the case. On September 8, 1983, Vicki Frost, as a representative of COBS (Citizens Organized for Better Schools) presented a petition signed by approximately 250 individuals to the Hawkins County School Board at its monthly public meeting. The petition protested the indoctrination of the school children in the tenets of the Wicca religion. Though the petition equated Wicca with "telepathy", Mrs. Frost admitted at trial that she knew that the term "Wicca" referred to witchcraft. Mrs. Frost testified that she believed witchcraft existed and that certain of its principles were being taught in the Hawkins County Schools. [Frost, Tr. B – 89, 90, 91].

On October 10, 1983, plaintiff Frost sent a letter to her daughter's elementary school teacher setting forth her parental objections to the second grade reader approved by the school board:

> . . . . Mrs. Sandidge, just this weekend did I have the opportunity to examine Sarah's *People Need People* reader. Humanism, distorted realism, self authority, sun worship, occult symbols are found throughout the book. Would you please take Sarah out of the Holt Basic reading and let her read in the Economy reader. I will help her with any outside work to make up any deficiency. Thank you. . . . [Price, Tr. C – 9]

The petitioner and her husband reaffirmed their secular objections to the second grade reader and school curricula in a second letter dated November 21, to elementary school principal, Jean Price:

> . . . . Because of the dictates of conscience, Sarah will be taken out of the reading period by her parents. The Holt Series readers teach child self-rule or authority, overindulgence of the negative emotions, distorted realism, and other concepts which are offensive to the Christian training of our child. We desire to exercise our American constitutional right of freedom of choice, therefore we choose for her not to participate in this reading class. . . . [Price, Tr. C – 24]

Mrs. Frost continued her frontal assault on the Hawkins County School Board in the local press during this time. In September the petitioner cautioned a local newspaper that she could not say anything else about the situation because she was entering into something "controversial" and could not "spill all of her marbles at once." [Frost, Tr. B – 69]. She warned the School Board that: "[T]here will probably be other action on this, I hope

you know." [Frost, Tr. B – 68]. On November 8, 1983, the School Board announced at its public meeting that all students would thereafter receive instruction from the Holt, Rinehart & Winston reading series which had been previously approved by the Board and the school system's textbook committee. The petitioner promptly proclaimed in the newspaper that: "[I]t's just going to be a showdown." [Frost, Tr. B – 70]. In "Letters to the Editor" Mrs. Frost continued to publicly attack the reading texts because they allegedly taught magic, occult symbols, and contained scary artwork. [Exhibit No. 30].

On November 14, 1983, Mrs. Frost advised Principal Price by telephone that Sarah would no longer be allowed to read the second grade textbook and that the principal should consider expelling Sarah from school. When the principal asked Mrs. Frost directly if her religious beliefs were at issue, Mrs. Frost responded that it was "hard" to classify the moral values involved in the textbook controversy as religion. [Price, Tr. C – 15].

During the month of November, Principal Price had numerous conferences with Mrs. Frost in an attempt to resolve Mrs. Frost's objections to the school's reading materials. The principal tried to persuade Mrs. Frost that it was not in her child's best interest to be removed each day from her reading classes. Mrs. Price explained that Sarah's arbitrary absences from class would adversely affect her grades, retard her advancement, and result in truancy problems. The principal repeatedly advised Mrs. Frost that she could remove Sarah from the school premises by signing her out. Mrs. Frost could not teach her child reading on her own terms on the school premises. [Price, Tr. C – 22-27]. On five separate occasions the

principal discussed the Tennessee compulsory attendance laws, the reading requirements, and the provisions of T.C.A. § 49-818 with Mrs. Frost. [Price, Tr. C – 20].

On November 21, the petitioner removed her daughter from her second grade reading class and left the school premises without incident. [Price, Tr. C – 27, 28]. The next day, however, Mrs. Frost insisted on remaining parked in her automobile in the school parking lot while she read to her daughter. The principal called police officer Joe Ashbrook and requested that he ask Mrs. Frost to leave the parking lot. After sending the principal a note by the officer, Mrs. Frost left the school premises with her daughter. No one threatened Mrs. Frost with arrest. [Frost, Tr. A – 40-42]. Later that evening Mrs. Frost telephoned a lawyer for the Concerned Women for America. [Frost, Tr. B – 44].

Early on the morning of November 23 plaintiff went by the Church Hill city offices looking for police officer Ashbrook. She told a city clerk that she expected to be arrested when she went to the elementary school. [Frost, Tr. A – 45-47; Douthat, Tr. VII – 54]. When she arrived at the elementary school, the petitioner demanded that Principal Price allow her to teach Sarah reading in the school cafeteria. The principal and Mrs. Frost again discussed school policy and procedure. Mrs. Frost continued to insist she be allowed to teach Sarah reading in the school cafeteria. Principal Price responded that she could not allow that. Mrs. Frost telephoned for Officer Joe Ashbrook. When he arrived, Mrs. Frost advised him and Principal Price that she would not leave the principal's office without being arrested. [Frost, Tr. A – 51; Price, Tr. C – 39, 40, 50, Exhibit No. 1; Ashbrook, Tr. VII – 106-109].

Officer Ashbrook read the provisions of T.C.A. § 49-818 to the petitioner and asked her to leave the school property since she had finished her business there. When the plaintiff insisted on remaining in the principal's office, she was arrested for violating T.C.A. § 49-818 and was transported to the county jail in Rogersville, Tennessee. Officer Ashbrook refused to allow Mrs. Frost to take her young daughter to jail with her. [Simpson, Tr. VII – 68].

The unconstitutional provisions of T.C.A. § 39-3-1204, regarding trespassing on school grounds, were not a factor in the petitioner's arrest. A citation to that statute was added to the arrest affidavit by the Hawkins County General Sessions Judge on the afternoon of November 23, several hours after the plaintiff had actually been arrested by Officer Ashbrook. [Lawson, Tr. D – 92].

Superintendent Bill Snodgrass learned of the petitioner's arrest later in the day while working at his Rogersville office. [Snodgrass Depo., 70]. Officer Ashbrook had not contacted Superintendent Snodgrass during the events preceding the plaintiff's arrest. [Ashbrook, Tr. VII – 105, 122]. Superintendent Snodgrass did not suggest the petitioner's arrest, did not arrange for it, and did not know of the arrest until after it had occurred. The jury's verdict exonerated Superintendent Snodgrass. [R. 95]. The Sixth Circuit Court of Appeals affirmed the judgment in favor of Superintendent Snodgrass.

ARGUMENT

REASONS FOR DENYING THE WRIT

This false arrest case involves a unique set of facts which do not raise any substantial constitutional issues. Its companion case, *Mozert v. Hawkins County Public Schools*, 647 F. Supp. 1194 (E.D. Tenn. 1986), rev'd, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1029 (1988), was the vehicle originally selected by the Concerned Women of America to raise the constitutional issues implicit in a parent's "sincere" religious objections to Hawkins County textbooks. Vicki Frost participated in that case as a plaintiff and was the star witness at the trial of the case. The constitutional issues presented to, and rejected by, this Court in the *Mozert* petition for certiorari are set out below. They encompassed the issues which the petitioner insists are important in this case:

Fourteen children were suspended from their public schools, or were otherwise disciplined, for refusing to read textbooks that violate their religious beliefs.

> 1. Does coercing children to read textbooks which violate their religious beliefs burden their free exercise of religion?
>
> 2. Is home instruction, under Tennessee law, for the single subject in dispute, a less restrictive alternative than expulsion of religious objectors from the public schools?
>
> 3. Are damages available under 42 U.S.C. § 1983 to reimburse parents for providing alternative education when their children are wrongfully excluded from the public schools, even when some of the costs are for private religious education?

Petitioner avoided the constitutional religious issues in her appeal to the Sixth Circuit. In fact, the petitioner

explicitly repudiated all First Amendment claims of religious freedom infringement at pages 28 and 29 of her brief in reply to the Hawkins County Board of Education's appeal filed with the Sixth Circuit on March 24, 1987:

> In the *Mozert* case, Frost was compensated for violations of her First Amendment right to free exercise of religion. The case at bar dealt with deprivation of Frost's other constitutional rights.

Petitioner's unequivocal disclaimer of any religious First Amendment issues being involved in her appeal should preclude her successfully asserting them now as a basis for certiorari.

The record developed at the trial of this false arrest case cannot support a review of any issues related to First Amendment rights. Evidence relating to the "sincerity" of religious beliefs, evidence of the reasons for the expulsion of unnamed students who were not involved in this false arrest case, and an examination of valid grounds for "exempting" unnamed students from certain required reading courses were never considered in this case and cannot constitute grounds for review. The record simply does not support the petitioner's claim that important constitutional issues are involved in this case.

The petitioner makes numerous references to *Wisconsin v. Yoder*, 406 U.S. 205 (1972). An examination of *Yoder* substantiates the inappropriateness of the Court's reviewing the present case. In *Yoder*, the Court emphasized that personal and philosophical beliefs were not equivalent to religious beliefs which had to be accommodated by the public school system. *Id.* at 215, 216. The Court analyzed the "quality" of the religious freedom

claims by examining a record which had been purposely developed at trial so that the religious issues could be addressed on appeal. In *Yoder*, the record was replete with testimony regarding the isolation, self-sufficiency, moral staunchness, and industriousness of the Amish community as evidenced by over two hundred years of documented experience. Detailed proof of the Amish lifestyle, accompanied by expert testimony on the effectiveness of the Amish vocational education system, convinced the Court that the Amish religious beliefs and life style were inseparately intertwined and conflicted "sharply" with contemporary secondary public education. *Id.* at 217. On nearly each page of its opinion, the Court specifically referred to the record in order to anchor its analysis of pertinent constitutional principles.

The record in this case is completely devoid of facts which can support an analysis of the issues framed by the petitioner. The petitioner did not introduce any proof of the depth of her alleged religious convictions. The record reveals little more than the petitioner believed witchcraft and secular humanism were being taught in the Hawkins County School System, that selected short stories allegedly taught female dominance, and that petitioner kept the family television set in a closet except on those frequent occasions when she was featured on local television news broadcasts. There is simply no evidence in the record as to whether plaintiff's personal convictions were shared by an organized religious group or whether those beliefs were related to a pattern of daily living in a religious context. As plaintiff's own letters and comments to Principal Price demonstrate, Mrs. Frost's objections to

her daughter's second grade reader were secular and philosophical, not religious, in nature.

The jury heard the evidence and found that none of the individual defendants had violated plaintiff's civil rights. The Sixth Circuit concluded that there was no evidence to support a jury finding that the Hawkins County School Board policy had violated any of plaintiff's civil rights. This Court has repeatedly announced that it will not review a judgment which must turn on an appreciation of the evidence or on inferences to be drawn therefrom. *Houston Oil Co. v. Goodrich,* 245 U.S. 440 (1917); *U.S. v. Johnston,* 268 U.S. 220 (1924); *National Labor Relations Board v. Waterman Steamship Corporation,* 309 U.S. 206 (1939); *General Talking Pictures Corporation v. Western Electric Company,* 304 U.S. 175 (1937).

The petitioner pled and presented a false arrest civil rights case at the district court level. The "constitutional" issues asserted by petitioner today were not raised in either the district court or the court of appeals. They are not supported by the record. Those "issues" should not be allowed to become the basis for a review by writ of certiorari. *Michel v. Louisiana,* 350 U.S. 91 (1955); *Needelman v. U.S.,* 362 U.S. 600 (1959); *Mishkin v. New York,* 383 U.S. 502 (1966); *Gilbert v. California,* 388 U.S. 263 (1967); *Tennessee v. Dunlap,* 426 U.S. 312 (1976); *Miree v. Dekalb County,* 433 U.S. 25 (1977).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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